In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 749

DANIEL J. MOTTO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner and others were convicted of conspiracy to violate the Interstate Travel Act (18 U.S.C. 1952) by using the facilities of interstate commerce to commit bribery in violation of State law. The evidence showed a scheme by the conspirators to arrange a kickback if Mr. Marcus, then Water Commissioner of New York City, awarded a large con-

tract to S. T. Grand, Inc. for cleaning the Jerome Park Reservoir in the Bronx.[1] The interstate use of the telephone between New York and Connecticut was an integral part of the unlawful activity.

Petitioner contends that his constitutional rights were infringed before the federal grand jury; that one Itkin, who testified against the defendants, did not participate in the conspiracy as an actual member thereof but rather as a government informer; and that the trial judge erred in not instructing the jury, in accordance with New York but not federal law, that the testimony of an accomplice required corroboration. Petitioner's claims are fully dealt with and answered in the extensive opinion of the court below, on which we here rely.[2]

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[1] S. T. Grand, Inc. and its president, Henry Fried, co-defendant below, have filed a separate petition for a writ of certiorari (No. 620, this Term) from the affirmance of their convictions below, to which we have filed a separate response. Another member of the conspiracy convicted below, Antonio Corallo, has likewise petitioned separately for certiorari in this Court, and the government has similarly filed a separate response as to him (No. 578, this Term).

[2] As petitioner notes (Pet. 2), that opinion is set forth in the appendices to the certiorari petitions filed in the companion *Fried* and *Corallo* cases (see note 1, *supra*).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1969.

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